S.B. CIVIL MISC. APPEAL NO.1272 /2006.
(Smt. Lalita & Ors. Vs. Shanker Nath & Ors.)

Date of Order :: 09th April 2007.

HON'BLE MR. JUSTICE DINESH MAHESHWARI

Mr. Vineet Sanadhya for Mr. Manish Shishodia , for the appellant.

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By way of this appeal, the claimants seek enhancement over the amount of Rs. 6,23,500/- with interest @ 6% per annum awarded by the Motor Accidents Claims Tribunal, Bhilwara in their Claim Case No. 265/2004 towards compensation on account of accidental death of Chandra Prakash, husband of the appellant No. 1, father of the appellants Nos. 2 & 3, and son of the appellants Nos. 4 & 5.

On 21.02.2003, the victim Chandra Prakash sustained grievous injuries while driving his Maruti car on Ajmer to Bhilwara route on being hit by an on-coming truck-trailer bearing registration No. HR55/ 6538; and succumbed to the injuries on 26.02.2003 while undergoing treatment at Ahmedabad. The wife, two minor daughters and parents of the victim sought compensation against the persons related with the said truck-trailer with the averments, inter alia, that the deceased was 33 years of age and was earning over Rs. ten thousand per month while serving with a firm M/s J.J. Marble and while managing his own business; was contributing about Rs. eight thousand five hundred per month to the family; and

would have enhanced his earnings and would have developed the estate for next 47 years. The claimants also averred that about Rs. two lacs were spent on treatment before the victim succumbed to the injuries.

For quantification of compensation, the Tribunal has scrutinized and analysed the entire evidence available on record and its findings could be summarised thus:

(i) The claimants asserted the age of deceased at 33 years but he had stated his date of birth as 13.08.1967 in the tax return Ex. 11. Hence, taking his age above 35 years, the Tribunal considered it proper to apply multiplier of 16.

(ii) The claimants asserted the income of the deceased while serving with M/s J.J. Marble and from his own business at about Rs. 10,000/- per month. The claimants relied upon a salary certificate (Ex. 76), issued on behalf of the said firm by the brother of deceased stating payment of Rs. 4,000/- per month to the deceased for his working as part time purchase manager; and upon the income-tax return (Ex. 10) for the accounting year 2002-03 filed by the wife of deceased on 27.01.2004 stating his net annual income at Rs. 98,753/-. However, the Tribunal found that the elder brother of the deceased (AW-2 Suresh Chandra) had issued the said salary certificate and no supporting

documents in the form of accounts of the said firm were produced. The Tribunal further found that the tax return relied upon by the claimants (Ex. 10) was filed about 11 months after his demise in relation to the accounting year 2002-2003 but previously:

(a) the deceased had shown his income for the accounting year 2001-2002 of salary of Rs. 24,000/- from one Laxmi Todi and business income of Rs. 24,123/- (return Ex. 11);

(b) for the accounting year 2000-2001 there was no business income and he earned salary of Rs. 30,000/- from M/s Kothari Enterprises and another Rs.26,400/- from Jagdish Todi and there were other components of income from house property at Rs. 20,400/- and from deposits and interest at Rs.7,511/- (return Ex. 12); and

(c) for the accounting year 1999-2000 total income at Rs. 55,200/- included the income from house property at Rs. 15,300/- and from interest at Rs. 768/- (return Ex. 13).

Hence, disbelieving the figures of income shown in the return Ex. 10 filed by the claimants, the Tribunal accepted the income of the deceased at Rs. 48,123/- as shown by himself in the last tax return Ex. 11; and observed that the income from house property and interest on deposits could not be taken towards loss

because such sources of income were available with the claimants. The Tribunal then provided for a component of some future likely enhancement and took the average income of deceased at Rs. 51,000/- per annum; and deducting one-third wherefrom and with application of multiplier of 16 assessed pecuniary loss of the claimants at Rs. 5,44,000/-; and allowed Rs.20,000/- towards non-pecuniary loss and Rs. 5,000/- towards funeral expenses.

(iii) In relation to the claim towards treatment expenses, the Tribunal examined the documents placed on record and disallowed the computer slips Ex. 17 to 29 carrying no signatures; and removed out of consideration the bills Ex. 32,33,34,36,37,42,47 and 48 not carrying the name of victim or his attendants. The Tribunal, however, allowed the amount of other bills at Rs. 45,581/- and also allowed Rs. 8,878/- towards transportation as evidenced by the receipts Ex. 61 and 62.

In the manner aforesaid, the Tribunal assessed total loss for the claimants at Rs. 6,23,459/- and awarded compensation in the round figure of Rs. 6,23,500/-; and allowed interest @ 6% per annum after adjustment of the amount of Rs.50,000/- received under interim award.

Assailing the award aforesaid as being low and inadequate, learned counsel for the claimants-appellants contended that the Tribunal has erred in not awarding adequate compensation with reference to the return of the income of the deceased, Ex. 10, that could not have been removed out of consideration merely for having been filed after his demise; that in view of younger age of the deceased, adequate enhancement for future prospects ought to have been provided as held by this court in the case of Smt. Kalli @ Kalyani & Ors. Vs. Indra raj Bairwa & Ors.: 2004 WLC(UC) 789; and that the Tribunal has erred in not awarding reasonable amount of compensation on treatment expenditure as proved by the bills, vouchers and receipts produced on record and in disallowing a large number of them for no valid reason.

Having given a thoughtful consideration to the submissions made by the learned counsel, having scanned through the record and having examined the impugned award dated 08.08.2005 this Court is satisfied that this appeal for enhancement over the amount of Rs. 6,23,500/- awarded by the Tribunal towards compensation remains bereft of substance and does not merit admission.

The assertion of claimants on the income of deceased, made with reference to the return filed by his wife, could not have been accepted without corroboration by cogent and

reliable evidence; and merely on the basis of a certificate issued by the elder brother of the deceased his salary income for the accounting year 2002-2003 could not have been taken at Rs. 44,000/- as alleged, particularly when corroborative evidence in the form of accounts of the firm allegedly making payment of salary were not produced; and when the assertion on total income as made in the return Ex. 10 at Rs. 98,753/- was disproportionately higher than the income shown by the deceased himself in his previous returns, Ex. 11, 12, and 13.

For the purpose of assessment of pecuniary loss of the claimants, the Tribunal has taken average income of the deceased at Rs. 51,000/- per annum on the basis of salary and business income as shown in the last return filed by the deceased (Ex. 11) at Rs. 48,123/-; and even this estimate appears to be excessive. The aspect of a part of the business income retaining itself to the claimants could not have been ignored and hence, base figure for assessment of adequate multiplicand ought to have been rather lesser than that adopted by the Tribunal. Enhancement in the name of future prospects does not fit in the fact situation of the present case; and Division Bench decision of this court in the case of Kalli (supra) providing for future advancement in career in relation to the victim who was a Sub-Inspector of Police in 28 years of age, obviously rules out its applicability hereto as the deceased Chandra Prakash has not been shown in any settled

job or employment with reasonable certainty of future increments. The income from house property and interest being not of loss has, of course, been rightly removed out from calculation.

The Tribunal has properly scrutinized the bills of expenditure and has rightly disallowed the inadmissible one. In fact, the unsigned computer prints rejected by the Tribunal are nothing but: (a) medicine issue reports Ex. 17 to 26 (of which Ex. 20 is for zero amount and Ex. 23 is cancelled one); (b) medicine returned report Ex. 27, printed at about 10:48 p.m. on 26.02.2003, the date of unfortunate demise; and (c) medicine consumption reports Ex. 28 & 29. Comprehensive hospitalization charges at Rs. 38,871/- as stated in the bill Ex. 31, and so also the amount of other reliable bills, have of course been allowed by the Tribunal. Some of the bills not carrying any name or description are difficult to be co-related with the present claim and the Tribunal has not committed any error in disallowing the same. The claimants have chosen to make the record unnecessarily cumbersome with production of pathological laboratory reports and monitor graphs, Ex. 63 to 74, and even the blank hospital folder Ex. 77. Having sifted through the entire record, this court is satisfied that amount allowed by the Tribunal towards treatment expenditure is neither unreasonable nor inadequate.

Then, it is noticed that the claimants have not been forthright in their submissions while claiming compensation and incorrectly stated the age of deceased at 33 years in the claim application and so also asserted his wife and brother in their deposition; though his date of birth of 13.08.1967 was in their specific knowledge and, obviously, he was 35 ½ years of age on the date of accident, 21.02.2003.

Claim for compensation is considered for the victim and sufferers of vehicular accident; and it inheres in the process that the conduct of the claimant/s is not blameworthy. The conduct of the claimants in this case, in deliberately misstating a material fact on the age of the deceased, then in filing tax return with inflated income figures, and then seeking the amount of expenditure on the basis of unnecessary, irrelevant and inadmissible documents only shows their attempt to seek extra and excessive compensation over and above the just and reasonable one; and meets only with disapproval.

In ultimate analysis, the amount awarded by the Tribunal in this case cannot be said to be low or inadequate than that of just compensation; and there appears no scope, nor any justification, for any upward revision.

The appeal fails and is, therefore, dismissed summarily.

(DINESH MAHESHWARI), J.

Mohan/